

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 871 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

STATE OF GUJARAT & 1

Versus

NESDA(R) GRAAMPANCHAYAT

Appearance:

MR RC KODEKAR AGP for Petitioners
MR PJ KANABAR for Respondent No. 1, 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 08/10/1999

ORAL JUDGEMENT

1. The petitioners have, by filing this Civil Revision Application under Section 115 of the Code of Civil Procedure, challenged the judgment and order dated 21.8.1993, passed by the learned Assistant Judge, Morbi, below Application Exhibit-1 in Civil Misc. Appeal No. 100 of 1993, whereby, the learned Assistant Judge refused

to condone the delay caused in filing Appeal against the

Order passed below Application Exhibit-5 in Regular Civil Suit No. 241 of 1992 for ad interim injunction in favour of the respondents restraining the petitioners from taking over the possession of the disputed land.

2. As per the contention raised by the petitioners the said disputed land was a government land, whereas, it was the case of the respondents that the disputed land belongs to the Gram Panchayat. The trial court allowed the Exhibit-5 Application and granted interim injunction against the petitioners till the final disposal of the present suit. The petitioners had challenged the said order passed by the learned Civil Judge (S.D.), Morbi, dated January 19, 1993, by filing Regular Civil Appeal before the Lower Appellate Court. As there was a delay of about 5 months in filing the Appeal, application for condonation of delay being Misc. Civil Application No. 100 of 1993 was also filed, to condone the said delay of 5 months. Learned Assistant Judge has dismissed the Application filed by the petitioner for condonation of delay, which has given rise to filing the present Civil Revision Application by the petitioners.

3. Heard the learned advocates appearing for the parties. It is the settled legal principle propounded by the Apex Court in several reported decisions that word "sufficient cause" as appearing in Section- 5 of the Limitation Act, should be liberally construed. In my

opinion, therefore, the Lower Appellate Court ought to have taken into consideration the reasons assigned by the petitioners for the delay caused in filing the Appeal within the period of limitation. The petitioners stated in their application that due to delay in obtaining sanction from the Legal Department, the Appeal could not be filed within the period of limitation. In my opinion, the petitioners had assigned sufficient reasons for condoning the delay caused in filing the Appeal before the Lower Appellate Court and, therefore, the Lower Appellate Court had materially erred in not properly exercising its jurisdiction in not condoning the delay caused in filing the Appeal.

4. As a result, for the foregoing reasons, this Civil Revision Application is allowed. The judgment and order dated 21st August, 1993, passed by the Assistant Judge, Morbi, below Application Exhibit-1 in Civil Misc. Appeal No. 100 of 1993 is quashed and set aside. The delay caused in filing the Appeal against the judgment and order dated 19.01.1993 passed by the learned Civil Judge (S.D.), Morbi, is condoned. The petitioners shall proceed with the hearing of the Civil Misc. Appeal before the Lower Appellate Court as expeditiously as possible. Rule is made absolute. There shall be no order as to costs.

p.n.nair